

November 23, 2021

**Via ECF**

The Honorable Nicholas G. Garaufis  
U.S. District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

In re: *Ortega v. Yeghoyan, et al.*  
21-cv-01125 (NGG-CLP)  
Letter Motion Requesting Leave to  
File Motion for Partial Summary Judgment

Dear Hon. Judge Garaufis:

My office represents corporate Defendant Champagne Room BK Inc. My office is in receipt of Plaintiff's First Amended Complaint, and this office would be remiss if it did not immediately request leave to file a Rule 56 Motion for Partial Summary Judgment, without the need for a premotion conference concerning the Motion, based upon information *not* included in the Plaintiff's complaint, and first amended complaint.

Plaintiff brings this claim in Federal District Court, under 28 U.S.C. §§ 1331 and 1343, because purportedly Plaintiff's claims raise a federal question. Plaintiff attempts to use Title VII of the Civil Rights Act of 1964, 42 U.S. Code § 2000e-2, et seq. ("Title VII") as a vehicle to bring her claims into this District Court. However, Plaintiff repeatedly fails to allege in her complaint, and in her First Amended Complaint, that the corporate Defendant Champagne Room BK Inc is an employer as defined in Title VII.

To qualify as an employer under Title VII, it must be alleged, and ultimately, proven that a defendant meets the employee-numerosity requirement of fifteen or more employees as required under Title VII. *Pavel v. Plymouth Mgmt. Grp., Inc.*, No. 02-CV-6195 (NGG), 2005 WL 2659089, at \*2 (E.D.N.Y. Oct. 18, 2005), aff'd, 198 F. App'x 38 (2d Cir. 2006). The numerosity requirement is not plead in either Plaintiff's initial or amended complaints. There is a reason for that—it is because Defendant Champagne Room BK Inc does not employ fifteen or more employees at *any* time relevant to Plaintiff's various Complaints.

It is anticipated that documentary evidence resolves the above-mentioned issues without the added need, or expense of depositions, and a trial.

Defendant Champagne Room BK Inc. requests, at least, until the last week of December 2021, to file its requested Rule 56 Motion for partial Summary Judgment.

Respectfully Submitted,

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